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In the Supreme Court of the United States

OCTOBER TERM, 1954

No.

J. RUPERT MASON, PETITIONER,

v.

SUMMER LAKE IRRIGATION DISTRICT, and
PUEBLO TRADING CO., RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

J. Rupert Mason prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Ninth Circuit, entered in the above case on November 10, 1954, affirming the order and decree of the United States District Court.

OPINIONS BELOW.

The opinion, order and decree by the District Court (R. 40 to 56). The decision by the Court of Appeals (Appendix, infra, pp. i, ii) is not yet reported.

JURISDICTION.

The decision of the Court of Appeals was entered November 10, 1954 (Appendix, infra, pp. i, ii). The jurisdiction of this Court is invoked under section 347 of the Judicial Code (28 U.S.C., § 1254).

QUESTIONS PRESENTED.

1. Whether 11 U.S.C.A. 401-403, the base of this petition, is a "Uniform law on the subject of bankruptcies throughout the United States".

2. Whether the seizure order affirmed by the Court of Appeals can be carried out by respondent without contravening applicable Oregon law and the vested rights of petitioner as owner of bonds federally protected by Art. I, sec. 10, cl. 1; Art. IV, sec. 2, sec. 3, cl. 2; and by the Fifth, Ninth and Tenth Amendments of the Constitution of the United States.

3. If not, is the seizure order within the constitutional power of Congress or the federal Courts?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Art. I, sec. 10, cl. 1, Art. IV and Fifth, Ninth and Tenth Amendments of U. S. Constitution; Title XLVIII, 1930 Oregon Code (secs. 48-101 et seq.); Oregon Laws 1915, c. 340, §§ 8, 11, 13-17, 25; Ore. Rev. Stats., Ch. 625, sec. 311.765, Ore. Laws 1953; 11 U.S.C.A. §§ 401-403; 11 U.S.C.A. § 35(a); Rev. St. § 3224, 26 U.S.C.A. 1543; 265 Jud. Code, 28 U.S.C.A. § 379; 43 Corp. Jur. p. 211; 44 Corp. Jur. pp. 1237, 1238.

11 U.S.C.A. § 403, the statute which is the base of this proceeding, provides in pertinent part:

Sec. 83(e),

"At the conclusion of the hearing, the judge shall make written findings of fact and his con-

clusions of law thereon and shall enter an interlocutory decree confirming the plan if satisfied that (6) the petitioner is *authorized by law to take all action necessary to be taken by it to carry out the plan.* If not so satisfied, the judge *shall* enter an order dismissing the proceeding." (Emphasis supplied.)

STATEMENT.

J. Rupert Mason seeks review of the decision of the Court of Appeals for the Ninth Circuit affirming the opinion, seizure order and decree by the District Court (R. 40 to 46). Petitioner's claims evidenced by general obligation bonds and judgment (R. 6 to 10) are not questioned. They are not *in custodia legis.* Objections to jurisdiction on Constitutional grounds were duly made (R. 14).

Summer Lake Irrigation District is a political subdivision of Oregon. The Acts of Oregon determined absolutely and conclusively the amount of the annual tax ordered to be levied upon all of the specified land in the District, and the manner it is to be apportioned. *Herrett v. Warm Springs I. D.* (Ore.), 168 Pac. 609; *Noble v. Yancey* (Ore.), 241 Pac. 338; *Kollock v. Bernard* (Ore.), 242 Pac. 847; *Enterprise I. D. v. State* (Ore.), 69 Pac. (2d) 953; *Kiesel v. Bishop,* 129 Pac. (2d) 276 (Ore.) are among the controlling decisions in the Oregon Courts. The annual assessments constitute "liens upon the real property within the District" (R. 15). In clear violation of law "No assessment has

been made (levied) for the payment of the District's bonded indebtedness since 1932" (R. 17). Respondent can not now take advantage of its own failure. *Public Market v. Portland* (Ore.), 130 Pac. (2d) 624.

Of the $319,100 bonds issued, a total of $262,900 are now owned by persons claiming to also own the tax liened land in this District (R. 19). They have filed only a "conditional" consent, as follows:

> "It is further agreed that if for any reason this contract shall not be approved by the United States District Court or upon appeal as provided above, it shall be void and of no effect and not binding upon the parties hereto" (R. 55, sec. IX).

Landed owners of bonds can avoid taxation whenever their bonds are surrendered to the District and are cancelled. Petitioner has no conflicting interests. Under like antagonistic circumstances, other Circuits have steadfastly denied Chapter IX petitions. *Kaufman County Lev. Imp. Dist. No. 4 v. Mitchell,* 116 F. (2d) 959 (CA 5), and *Town of Bellair v. Groves,* 132 F. (2d) 542 (CA 5), cert. denied 318 U.S. 769.

It is agreed that this District "Is a taxing agent and instrumentality within the State of Oregon whose indebtedness * * * is payable solely out of the proceeds of special assessments levied against or constituting liens upon real property within the District" (R. 15). Such liens for unpaid assessments are not inferior to the lien for unpaid taxes due to other political subdivisions. *In re Horsefly Irr. Dist.,* 254 Pac. 825. *Magee v. Whiteacre,* 106 Pac. (2d) 751; *Fallbrook v. Cowan,* 131 F. (2d) 513, Cert. den. 320 U.S. 735. The

liens securing these bonds are not "dischargeable" in bankruptcy.

The mandatory annual tax or assessment payable by the land holders are "claims of the State" protected by Art. IV, sec. 3, cl. 2. "And nothing in this Constitution shall be so construed as to Prejudice any Claims of * * * any particular State". *Gibson v. Chouteau,* 13 Wall. 92, 99 (1872).

While the original Chapter IX of the Bankruptcy Act made full provision for State consent, it was nevertheless held *ultra vires* the Constitutional bankruptcy power of Congress in *Ashton v. Cameron,* 298 U.S. 513 (1936). The amended Chapter IX, the base of this case, omits any provision for State consent.

This Court of Appeals did not pass upon the Constitutional requirement of "Uniformity", or the immunity of the sovereign borrowing power of a State, in its four opinions cited in the first paragraph of its instant opinion (Appendix p. i, infra). These Constitutional questions are presented here as an actual controversy for the first time in an Amended Chap. IX proceeding since the *Ashton* decision, supra.

No State law or decisions are cited in the instant decision. Only the cases of *United States v. Bekins,* 304 U.S. 27, and *J. R. Mason v. Paradise,* 326 U.S. 536, are cited. In the *Mason* case, no constitutional point was decided. In the *Bekins* case, the Court very clearly said:

> "The reservation to the States by the 10th Amendment protected and did not destroy their right to make contracts and give consents *where*

that action would not contravene the provisions of the Federal Constitution." (Emphasis supplied.)

The 1939 State consent in the instant case as applied to bonds issued in 1921 contravenes the provisions in Art. I, sec. 10; Art. IV, sec. 3, cl. 2, and the Fifth, Ninth, Tenth and Fourteenth Amendments of the United States Constitution.

There is serious conflict over "uniformity" and the compulsion allowed by Chap. IX, the Seventh Circuit Court of Appeals holding that compulsion can be invoked regardless of State law. *In re So. Beardstown Dr. Dist.* (C.A. 7), 125 Fed. (2d) 13. The District Court adopted this view in *In re Summer Lake I. D.*, 33 F. Supp. 504, in a previous petition begun by respondent and dropped. (R. 18.) The instant decision by the Court of Appeals has disregarded the controlling State law and decisions, which are *res adjudicata*. *Gelpke v. Dubuque* (1864), 1 Wall. 175.

The Fifth and Eighth Circuit Courts, contrary to the Seventh and Ninth Circuits, hold that Chap. IX allows no summary or coercive jurisdiction. *Spellings v. Dewey* (C.A. 8), 122 F. (2d) 652; *Leco v. Crummer* (C.A. 5), 128 F. (2d) 110; *Ware v. Crummer,* (C.A. 5), 128 F. (2d) 114; *Green v. City of Stuart* (C.A. 5), 135 F. (2d) 33, cert. den. 320 U.S. 769, reh. den. 320 U.S. 813; *Berry v. Root* (C.A. 5), 148 F. (2d) 945, cert. den. 326 U.S. 755; *Rittenoure v. City of Edinburgh* (C.A. 5), 159 F. (2d) 989. In this case the Fifth Circuit Court of Appeals said:

> "Chapter IX is a special extension * * * not a true bankruptcy in that the property of the debtor is not surrendered to the Courts nor are its debts discharged."

In *Spellings,* supra, the Eighth Circuit Court of Appeals said:

> "The bankruptcy court could have no greater powers than were given it by the special statute under which it was authorized to act. The right to interfere with any of the political or governmental powers of the district was expressly denied it, and, indeed, could probably not be held to exist even in the absence of the prohibition."

Consistently with this latter interpretation of Chap. IX, the Supreme Court of Michigan announced in *Clark v. City of Royal Oak,* 38 N.W. (2d) 413, cert. den. 338 U.S. 890:

> "Decree of federal court approving (Ch. IX) plan of composition * * * would not be binding as to * * * duties of Drain Commissioners under State law, the construction and interpretation of which by State Courts are binding on the Federal Courts."

The Fifth Circuit Court finally upheld the constitutional rights of one investor in municipal bonds at the end of a long protracted Chap. IX proceeding. *Wright v. City of Coral Gables* (C.A. 5), 137 F. (2d) 192, affirmed 321 U.S. 753, by 4 to 4 vote.

In *Kohl v. U. S.,* 91 U. S. 371, it was said:

> "If the United States have the power it must be complete in itself. It can neither be enlarged or

> diminished by a State. * * * The consent of a State can never be a condition precedent to its enjoyment."

In *International Shoe Co. v. Pinkus,* 278 U.S. 261, it was said:

> "The National purpose to establish uniformity necessarily excludes State regulation * * * States may not pass or enforce laws to interfere with or complement the Bankruptcy Act * * *"

In *Kalb v. Feuerstein,* 308 U.S. 433, it was said:

> "Federal bankruptcy power is, of course, paramount and supreme and may be so exercised by Congress as to exclude every competing or conflicting proceeding in state or federal tribunals."

In *Transportation Co. v. Wheeling,* 99 U.S. 273, it was said:

> "It is settled that the power to tax, and the power to regulate and prohibit taxation, are given in the Constitution by separate clauses, and that those powers are altogether separate and distinct from the power to regulate commerce."

In the government's brief by Hon. Robert H. Jackson, as Solicitor General, in the case of *U. S. v. Bekins,* 304 U.S. 27, it is said at p. 67:

> "Not only, therefore, is the choice of the taxing agency wholly voluntary, but it must necessarily be made *subject to the provisions of the State law.* Even after the taxing agency has itself invoked the bankruptcy jurisdiction, the Court is without any control over its fiscal affairs * * *"

In the oral argument, it was stated by the Solicitor General:

> "This bankruptcy act can never apply to any district unless there is a *finding* that the *law of the State* authorized it to seek that remedy *and authorized it to carry that remedy to completion.*" (Emphasis ours.)

That this argument was adopted is proven by language in the *Bekins* decision, as follows:

> "The bankruptcy power is exercised * * * only in a case where the action of the taxing agency in carrying out a plan of composition * * * is authorized by State law."

Thus federal jurisdiction of proceedings based on Chap. IX clearly depends on the will or whim of each of the States. Therefore Chap. IX is not a "Uniform law on the subject of Bankruptcies throughout the United States."

It is respectfully submitted that jurisdiction in the instant case depends entirely on the Constitution of the United States. The bankruptcy power can not be enlarged or opposed by the "consent" of a State, or by even 99% of the owners of the bonds at bar. If bankruptcy jurisdiction exists, even a little bit, it is supreme and paramount. Chap. IX although first urged as an "Emergency" with a limited life has often been amended and is now permanent, unless disallowed. It now includes county, city, school district and just about every kind of local government or authority bond issues. It is an open invitation

to tax strikes by both landed and mortgage owning interests.

Petitioner's interest in fiscal affairs is recorded in Hearings, 71st Cong., 3d Sess., House Comm. on Irr. & Recl., S. 4123, Dec. 11, 12, 1930, at pp. 14 to 36, 51, 52. Hon. Phil D. Swing, who co-authored the historic Boulder Canyon Project Act, said, at p. 14:

> "I want to say in connection with Mr. Mason that he is and has been an able and distinguished friend of reclamation and drainage projects for a good many years, assisting them in financing through the sale of bonds, and even showing his faith by investing his own money in them."

Petitioner has never doubted that the States can tax and control the private tenure of land within their dominium as responsible sovereigns, without any need for intervention or "aid" from any other tax-supported sovereign.

In support of this conviction, State sovereign power and duty in this field has been defended vigilantly, both through counsel and *in personam*, in many test cases, in both state and federal Courts. See Brief in Opposition to Motion for Rehearing by this Court in No. 859, October Term, 1935, presented by counsel Cook, Herrick, and former Governor of California, James N. Gillette, of counsel, dated September 23, 1936, filed "As counsel for J. Rupert Mason and others". The rehearing was denied, despite the large number of briefs urging rehearing, including one signed by the attorneys general of 11 States, including California. The denial of this rehearing is dis-

cussed in *Brush v. Comm.*, 300 U.S. 352 at 366-369, in constitutional respects.

In 1916 in the midst of another crisis Justice Charles Evans Hughes said:

> "But in the face of the difficulties already upon us, and destined to increase in number and gravity, we remain convinced of the necessity of autonomous local governments. An over centralized government would break down of its own weight * * * If there were centered in Washington a single source of authority from which proceeded all the governmental forces of the country—created and subject to change at its will * * * I think we should swiftly demand and set up a different system. If we did not have States we should speedily have to create them * * *." (New York State Bar Assn. Rept., Vol. XXXIX, pp. 273-274.)

But, if the States are allowed to get help from Congress in the form of "aid" through federally collected taxes, and at the same time the States are allowed to do what Art. I, sec. 10, cl. 1 so unequivocally forbids, the loopholes for feudal monopoly could easily become impossible to ever constitutionally seal up.

Congress and the States cannot both function as the sovereigns each was meant to be if Congress has power to veto loans made pursuant to the borrowing power of a State, and specified land has been charged to pay the money borrowed by a political subdivision. The Court may take judicial notice of the fact that political scientists agree that ground rent due by a

landholder as taxes, cannot be shifted to a tenant or on to anybody else. *Wealth of Nations,* Bk. 5, c. 2, Adam Smith (1776); *Principles of Political Economy,* Bk. 5, c. 2, sec. 2, John Stuart Mill (1884); *Public Finance,* p. 308, Prof. Harley L. Lutz (1925), who writes: "The conditions which determine the rental value of a piece of land are determined entirely independently of the taxes which may be imposed on the owner." *Elementary Economics,* 3d Ed., Fairchild, Furniss & Buck, p. 74, says: "A property tax on land can certainly give the owner no power to sell the land at a higher price; nor does it give him power either to exact more rent from a tenant or charge higher prices for agricultural products."

In *City of Beatrice v. Wright* (Neb.), 101 N.W. 1039, 1043, it is said:

> "To say that such property (land) cannot be sold for what it is worth in the markets, even though for a less sum than the assessments against it, is to defeat the very objects of taxation and lead to results the Constitution itself sought to avoid."

See, also:

> *Gibbons v. Hood River I. D.* (Ore.), 133 Pac. 772.

In *Willcuts v. Bunn,* 282 U.S. 216, 226, it was said by Chief Justice Hughes:

> "These obligations constitute the contract made by the State, or by its political agency pursuant to its authority, and a tax upon the amounts payable by the terms of the contract has there-

> fore been regarded as bearing directly upon the exercise of the borrowing power of the Government."

In *Monaco v. Mississippi* (1934), 292 U.S. 313, it was said:

> "Behind the words of the Constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character."

Those who think Federal power must be paramount and supreme, and that the Sovereign States should not raise their own revenues, are winning friends and influencing many people. They seem quite willing for Congress to seize and abrogate the vested property rights of owners of valid, binding and unpaid municipal bonds, yet are unwilling for Congress to tax the interest from the same bonds.

The doctrine of intergovernmental immunity was bottomed on the conviction that the sovereign power of each State to tax land values would be and must remain "independent and uncontrollable" by Acts of Congress, in "the most absolute and unqualified sense." *Federalist No. 32* by Hamilton. This sovereign State independence has been steadfastly protected for a very long time. *Pollock v. Farmers L. & T. Co.* (1895), 158 U.S. 601, 630; *Ashton v. Cameron County W. I. D. 1,* (1936), 298 U.S. 513, 530; *Brush v. Comm.,* 300 U.S. 352, 366; *Hale v. Iowa State Board,* 302 U.S. 95, 107; *Ark. Corp. v. Thompson,* 313

U.S. 132; *Guaranty Tr. Co. v. York* (1945), 326 U.S. 99; *New York v. U. S.* (1945), 326 U.S. 372.

> "* * * a law for abrogating or preventing the collection of a tax laid by the authority of the state (unless upon imports and exports) would not be the supreme law of the land, but a usurpation of power not granted by the Constitution." Federalist, No. 33.

Mr. Justice Marshall wrote:

> "No political dreamer was ever wild enough to think of breaking down the lines which separate the States and compounding the American people into one common mass." *McCulloch v. Maryland* (1819), 4 Wheat. 316, 403.

And James Bryce said:

> "America is a Commonwealth of commonwealths, a Republic of republics, a State which, while one, is nevertheless composed of other States even more essential to its existence than it is to theirs."

Petitioner respectfully submits that the bond obligations of Summer Lake Irrigation District are valid, binding and unpaid statutory contracts made by the State of Oregon in the exercise of its sovereign power to borrow money and tax specified land. The money was borrowed in 1921. The facts are not disputed.

In *Twohy v. Ochoco Irrigation District,* 108 Ore. 1, (210 Pac. 873), at page 53, on rehearing, the Supreme Court said:

> "Defendant irrigation district is declared by the statutes to be a municipal corporation; it is en-

> dowed by the statute with the governmental powers of taxation * * * its officers are public officers, charged with public duties."

That this principle of immunity and uniformity is supported by this Court is made clear in the *Ashton* case, supra, where it is said:

> "The Constitution was careful to provide that 'no State shall * * * pass any * * * law impairing the obligation of contracts' * * * Nor do we think she can accomplish the same end by granting any permission necessary to enable Congress so to do. Neither consent nor submission can enlarge the powers of Congress."

Either this Court still supports this interpretation of the Constitution, or it was reversed in some subsequent positive decision, unknown to this Petitioner. A careful reading of the opinions issued in the later case of *New York v. U.S.*, supra, leaves no doubt that this Court has adhered to the Constitution, as construed and applied in the *Ashton* case, above quoted from.

SUMMARY.

Wherefore, it is submitted that there is no constitutional authority for Congress to subject the sovereign borrowing power of a State or its political subdivisions to Federal Bankruptcy jurisdiction either alone or with State enabling legislation.

Congress can not constitutionally consent to any action by the State impairing the obligation of its own

contracts, and Congress can not enact anything except "uniform laws on the subject of bankruptcies throughout the United States." It is wholly a question of federal constitutional power, which never can be opposed by a State, because "the national purpose to establish uniformity necessarily excludes State regulation."

International Shoe Co. v. Pinkus, supra.

REASONS FOR GRANTING THE WRIT.

The seizure order affirmed by the Court of Appeals is in conflict with the decisions of other United States Courts of Appeals and the Court has decided a federal constitutional question in conflict with applicable decisions of this Court.

For the above reasons it is respectfully submitted that the writ of certiorari should be granted, the judgment and opinion of the Court below reversed, and the proceeding dismissed on the constitutional grounds shown.

Dated, San Francisco, California,
January 10, 1955.

Respectfully submitted,
J. RUPERT MASON,
Pro Se.

(Appendix Follows.)

Appendix

United States Court of Appeals
for the Ninth Circuit

J. Rupert Mason, Appellant, vs. Summer Lake Irrigation District and Pueblo Trading Co., Appellees.	No. 13,776 Nov. 10, 1954

Appeal from the District Court for the
District of Oregon.

Before Healy, Pope and Chambers, Circuit Judges.

Per Curiam.

The appellant appeals from a decree of the District Court which was entered January 23, 1953, and urges as grounds therefor points and contentions which were heard and disposed of in West Coast Life Ins. Co. v. Merced Irr. Dist., 114 F. 2d 654; Thomas v. El Dorado Irr. Dist., 126 F. 2d 922; Mason v. El Dorado Irr. Dist., 144 F. 2d 189; Mason v. Banta Carbona Irr. Dist., 149 F. 2d 49; United States v. Bekins, 304 U.S. 27; and Mason v. Paradise Irr. Dist., 326 U.S. 536. No new points or contentions are present here. The same appellant was the Mason named in three of the cases cited.

Upon the authority of these cases, the decision and judgment of the District Court is affirmed.

Indeed, the appeal is so unsubstantial and frivolous as to suggest that it was taken merely for delay. The court has seriously considered awarding damages against the appellant for the delay, as provided in Title 28, U.S.C.A. §1912. Cf. Slaker v. O'Connor, 278 U.S. 188, 191; Re Midland United Co., 3d cir., 141 F. 2d 692; Massachusetts Bonding & Insurance Co. v. Feutz, 8 cir., 182 F. 2d 752; Fern Gold Mining Co. v. Murphy, 9 cir., 7 F. 2d 613. Here the persons entitled thereto have been deprived of the $50,000 paid into court for approximately a year and a half. They have lost the use of that sum and their damages are substantial. Yet because the court has heretofore failed to apply §1912 in many cases where it might have been invoked, we have decided to hold our hand here, letting this reference to the statute serve as notice of the possibility that it may be applied in the future.

(Endorsed:) Per Curiam Opinion. Filed Nov. 10, 1954. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

J. Rupert Mason, Appellant, vs. Summer Lake Irrigation District and Pueblo Trading Co., Appellees.	No. 13,776

JUDGMENT

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the Appellees and against the Appellant.

It is further ordered and adjudged by this Court that the Appellees recover against the Appellant for their costs herein expended and have execution therefor.

(Endorsed:) Judgment. Filed and entered November 10, 1954. Paul P. O'Brien, Clerk.